Supreme Court, U. S.
FILED
DEC 7 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-772

COUNTY COMMISSION, HALE COUNTY, ALABAMA; CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, and JOHN STOKES, Commissioners; RICHARD M. AVERY, Probate Judge; and W. H. KNIGHT, Chairman of the Hale County Democratic Executive Committee,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, NORTHERN DIVISION

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

Jurisdictional Statement 1

Opinions Below 2

Jurisdiction 2

Questions Presented 3

Statutes and Constitutional Provisions Involved 3

Statement 7

The Questions Presented Are Substantial 8

Certificate of Service 12

Appendix I—Opinion and Order and Judgment of Three-Judge United States District Court for the Southern District of Alabama, Northern Division A1

Appendix II—Notice of Appeal A12

Table of Authorities

Cases

United States of America v. *Board of Commissioners of Sheffield County, Alabama*, Civil Action No. 76-M-1086-NW; In the United States District Court for the Northern District of Alabama, Northwestern Division. (So far as known, unreported.) 10

Constitutional and Statutory Provisions

Tenth Amendment, Constitution of the United States 10

28 U.S.C. 1253 3

28 U.S.C. 2201 2

42 U.S.C. 1973 .....2, 3, 8

42 U.S.C. 1973b 2, 3, 8, 9

42 U.S.C. 1973c 2, 3, 4, 8, 9, 10, 11

42 U.S.C. 1973l 6

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COUNTY COMMISSION, HALE COUNTY, ALABAMA; CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, and JOHN STOKES, Commissioners; RICHARD M. AVERY, Probate Judge; and W. H. KNIGHT, Chairman of the Hale County Democratic Executive Committee,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, NORTHERN DIVISION

JURISDICTIONAL STATEMENT

Appellants, Hale County, Alabama; Hale County Commission; Clifton Abernathy, Harry Drake, Goldsby Tucker, and John Stokes, members of the Hale County Commission; Richard M. Avery, Judge of Probate of Hale County, Alabama; and W. H. Knight, Chairman of the Hale County Democratic Executive Committee, were defendants in the original action filed against them in the United States District Court for the Southern District of Alabama, Northern Division.

The Three-Judge Trial Court entered judgment on October 18, 1976 in favor of the plaintiff, United States of America, and against the defendants, on the issue as to whether the provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973b, 1973c) apply to Hale County, Alabama. Appellants herewith submit this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that a substantial question is presented.

OPINIONS BELOW

The opinion of the three-judge District Court for the Southern District of Alabama, Northern Division, has not yet been reported. A copy of this opinion is attached hereto as Appendix I.

JURISDICTION

This suit was brought under 42 U.S.C. 1973, 1973c, and 1973(j)(d) and 28 U.S.C. 2201, seeking to enjoin the November 2, 1976 general election in Hale County, Alabama, as respected the election of two of the associate members of the Hale County Commission, which is the governing body of Hale County, Alabama, and to enjoin the election of members of said commission by at-large election under three enactments of the Legislature of the State of Alabama on the grounds that such enactments, passed after the Voting Rights Act of 1965, were not properly submitted to the Attorney General of the United States or the United States District Court for the District of Columbia, and seeking further an order putting into effect a "district election, district residence" scheme of election. The judgment of the three-judge United States District Court for the Southern District of Alabama, Northern Division, was entered on October 18, 1976, and Notice of Appeal was filed in that court on November 15, 1976. The jurisdiction of the Supreme Court by appeal is conferred by Title 28, U.S.C., Sec. 1253.

QUESTIONS PRESENTED

1. Do the provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973, 1973b, 1973c) apply to Hale County, Alabama?

2. Have the Attorney General of the United States and the Director of the Census made such certification(s) and determination(s) as required by 42 U.S.C. 1973b(b) to effectuate the applicability of the provisions of 42 U.S.C. 1973c to Hale County, Alabama?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The following Federal Statutes are involved:

Title 42, U.S. Code, Section 1973b(b) reads as follows:

"The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant

to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register." (Emphasis Added)

Title 42 U.S. Code, Section 1973c reads as follows:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in ef-

fect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment, no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, standard, practice, or procedure has been submitted by the chief legal officer or

other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court." (Emphasis added)

Title 42, U.S. Code, Section 1973l(c)(2) reads as follows:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

The following enactments of the Legislature of the State of Alabama are involved:

> Act No. 61, Regular Session, 1953, page 89 (providing for "at-large election, district residence" scheme of election);
>
> Act No. 370, Regular Session, 1959, page 961 (providing for "district election, district residence" scheme of election);
>
> Act No. 320 Regular Session, 1965, page 439 (providing for "at-large election, district residence" scheme of election);
>
> Act No. 2022, Regular Session, 1971, page 3261 (providing for at-large election with no residency requirement other than that a candidate be a resident of Hale County, Alabama);
>
> Act No. 620, Regular Session, 1973, page 925 ("at-large election, district residence" scheme of election).

STATEMENT

The Appellants in this case are the Judge of Probate and members of the Hale County Commission of Hale County, Alabama, the governing body of Hale County, Alabama, and the chairman of the Hale County Democratic Executive Committee. The original complaint was filed in the United States District Court for the Southern District of Alabama, Northern Division, on July 29, 1976. The complaint alleged that none of the three enactments of the Legislature of Alabama which came after the enactment of the Voting Rights Act of 1965 were properly submitted to the Attorney General of the United States or to the United States District Court for the District of Columbia, as re-

quired by said Act. The complaint sought to enjoin the November 2, 1976 general election in Hale County, Alabama, as respected the election of two associate members of the Hale County Commission, and further sought an order implementing a "district election, district residence" scheme of election for members of the Hale County Commission.

The Appellants filed an answer and an amended answer, and certain motions were filed. The Government and the defendants entered into a Stipulation which, *inter alia*, set out the issues before the court. The issue of controlling importance was whether the provisions of the Voting Rights Act of 1965 applied to Hale County, Alabama, for if they did not, it was stipulated that the complaint was due to be dismissed. After submission of briefs and the stipulation, the three judge United States District Court, on October 18, 1976, entered Order and Judgment ruling, *inter alia*, that the provisions of the Voting Rights Act of 1965 applied to Hale County, Alabama, and the three Legislative enactments subsequent to the enactment of the Voting Rights Act of 1965.

Appellants filed on November 15, 1976 Notice of Appeal to the Supreme Court of the United States from the Order and Judgment of the three-judge District Court with said court. (See Appendix II)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The basis of this suit lies with the Voting Rights Act of 1965 (42 U.S.C. 1973, 1973b, 1973c) and the question of whether the said Federal statute is applicable to Hale County, Alabama is of crucial importance to this litigation,

as, if the statute is not applicable, the Government's suit is ill-taken and due to be dismissed.

The specific question involved is whether the Attorney General of the United States and the Director of the Census ever properly made the determination(s) and certification(s) required by 42 U.S.C. 1973b(b) to effectuate the applicability of 42 U.S.C. 1973c to Hale County, Alabama; that is, whether Hale County, Alabama was ever properly designated as a political subdivision covered by the Act.

Specifically at issue is whether a designation and certification published in 30 Federal Register 9897 of several states listed by the Attorney General, including Alabama, and several states, and some political subdivisions of states, by the Director of the Census, effectuated the applicability of 42 U.S.C. 1973c to Hale County, Alabama. The said Federal Register entry nowhere includes in either the certification by the Attorney General or the Director of the Census, Hale County Alabama, as a political subdivision. The Government's contention is that the inclusion of the State of Alabama in said certifications constituted a certification of every political subdivision of said state. The Defendant's contention is that the statute in this case is clear on its face as to the requirement of the listing of states *and* political subdivisions and that because of the failure of the Attorney General and the Director of the Census to include Hale County, Alabama, as a political subdivision does not meet the requirement of the statute to effectuate the applicability of 42 U.S.C. 1973c to Hale County, Alabama.

To the knowledge of the writers of this statement, this case is a case of first impression in this court on this point; in fact, the writers are unable to find any judicial decision on this specific question. The only case the writers are aware of in which this issue was raised was decided to

other factors. *United States* v. *Sheffield, Alabama,* Civil Action No. 76-M-1086-NW; In the United States District Court for the Northern District of Alabama, Northwest Division (which said decision has not, to the knowledge of the writers, been reported).

Considering the fact that the provisions of the Voting Rights Act of 1965 impose a burden on certain state and local governments in this nation which are not imposed on others, and the further fact that without the said statute no such burden would be imposed under the Constitution and Laws of this nation, and considering the further fact that from the language of the said enactment, designation of the units of government covered by the Act is a clear condition precedent to the coverage or applicability of the Act to a jurisdiction or unit of government, it is submitted that this issue is of paramount importance, not only to this case but to the statutory applicability of the provisions of 42 U.S.C. 1973c in general. It goes without the necessity of citation that litigation has ensued since 1965 affecting numerous state and local governments under the Voting Rights Act of 1965. The applicability of the Act affects a basic and cherished Constitutional concept in this nation—the right of citizens to provide for the system of election of local governments, be it their State government or a creature or political subdivision thereof. This involves not only the rights reserved to the States under the Tenth Amendment to the Constitution of the United States, but also the basic Federal system of government in this nation.

If upheld, or left in effect, the decision of the trial court will cost the government of the rural and sparsely populated County of Hale in the State of Alabama a considerable additional amount of needed tax revenue to defend the county's electoral method respecting the membership of its governing body. This is evident from the probability that the defendants will have to bear the expense of substantial litigation in the United States District Court for the District of Columbia to uphold the constitutionality of its method of election. Perhaps this aspect of the effect of the decision of the trial court is minor when one considers the overall effect as respects the numerous jurisdictions or units of government which are similarly situated.

It is interesting to note that while the substantive question as to the constitutionality of the method of electing members of the governing body of Hale County, Alabama is not directly at issue in this litigation, that method is at-large election with district residence requirement. In view of the fact that the Black population is a population majority in Hale County, Alabama, and that at-large elections are generally favorable to population majorities, the Defendants are confident that the challenged statutes setting up the method of election of members of the Hale County Commission are constitutional and that the Defendants will be successful in establishing the same. Yet, litigation of this nature, especially when required to be in the District Court for the District of Columbia, is very expensive. Further, the very fact that the substantive question as to the constitutionality of the statute under which members of the Hale County Commission are elected is not directly at issue in this lawsuit, makes the issue of the applicability of the provisions of the Voting Rights Act of 1965 even more important.

It is respectfully submitted that the decision below is contrary to the clear language of the Federal statutes involved, and is erroneous; that the question presented in this litigation as to the applicability of 42 U.S.C. 1973c to Hale County, Alabama, and its citizens is substantial; that the public and substantial jurisdictional issue presented by this litigation involves the Federal nature of

this republic; and it is respectfully submitted that this court should grant oral argument to the end that the judgment and decision of the three-judge United States District Court for the Southern District of Alabama, Northern Division, be reversed, and the complaint against the Defendants in this case be dismissed.

Respectfully submitted,

W. McLEAN PITTS
CARTLEDGE W. BLACKWELL, JR.

CERTIFICATE OF SERVICE

I, W. McLean Pitts, one of the attorneys for the appellants, County Commission, Hale County, Alabama, Clifton Abernathy, Harry Drake, Goldsby Tucker, and John Stokes, Commissioners; Richard M. Avery, Probate Judge; and W. H. Knight, Chairman of the Hale County Democratic Executive Committee, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of December, 1976, I have served copies of the foregoing Jurisdictional Statement on the United States of America, by mailing copies in duly addressed envelopes, with first class postage prepaid, to the following:

Mr. Edward H. Levi
Attorney General of the United States
United States Department of Justice
Washington, D. C. 20530

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Washington, D. C. 20530

W. McLEAN PITTS
Of Counsel for Appellants

APPENDIX

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION

No. 76-403-p

UNITED STATES OF AMERICA,
Plaintiff,

v.

COUNTY COMMISSION, HALE COUNTY, ALABAMA, CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, and JOHN STOKES, Commissioners; RICHARD M. AVERY, Probate Judge; and W. H. KNIGHT, Chairman of the Hale County Democratic Executive Committee,
Defendants.

OPINION AND ORDER

(Filed October 18, 1976)

This action was commenced by the Attorney General on behalf of the United States of America pursuant to the Voting Rights Act of 1965, 42 U.S.C. 1973, 1973c, 1973(j)(d), and 28 U.S.C. 2201, to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments.

This court has jurisdiction pursuant to 42 U.S.C. 1973(j)(f) and 28 U.S.C. 1345.

This court is properly convened as a District Court of three judges pursuant to 42 U.S.C. 1973c and 28 U.S.C. 2284.

It is alleged that Hale County, Alabama, is a political and geographical subdivision of the State of Alabama and the defendant County Commission of Hale County is a governing body established under the laws of the State of Alabama responsible for exercising the powers and duties inherent in conducting county business. The Probate Judge defendant, the County Commissioners, and Chairman of the Hale County Democratic Executive Committee are properly before the court.

The plaintiff claims that 42 U.S.C. 1973 (the Voting Rights Act of 1965), and in particular, Section 4 (§1973c), applies to Hale County, Alabama, and that Hale County failed to follow the procedures as set out in Section 5 (§1973d), and that the failure of the defendants to meet the preclearance requirements of Section 5 (§1973d) with respect to certain changes in the method of electing the County Commissioners, were and are therefore unlawful. The plaintiffs seek to have this court enjoin the November 2, 1976 election of the County Commissioners under the at-large plan enacted subsequent to the Voting Rights Act of 1965 and grant such additional relief as the interests of justice may require.

The parties prior to the hearing presented the court a stipulation which set out the facts upon which the case was to be submitted and defined the legal issue in dispute (see plaintiffs' Exhibit A). Pursuant to that stipulation, the court makes the following findings and the course of action to be pursued concerning the November 2, 1976 election.

1. Hale County, Alabama, is a political and geographical subdivision of the State of Alabama and is organized and exists under the laws of that State.

2. On August 6, 1965, the Attorney General of the United States made a determination pursuant to Section 4(b)(1) of the Voting Rights Act of 1965, that the State of Alabama maintained a test or device on November 1, 1964, as defined in Section 4(c) of the Act. (See Stipulation, Exhibit 1).

3. On August 6, 1965, the Director of the Bureau of the Census, United States Department of Commerce, made a determination that less than 50% (fifty percent) of the persons of voting age residing in the State of Alabama voted in the presidential election of November, 1964. Said determination, as well as the determination made in paragraph 2, was published in the Federal Register on Saturday, August 7, 1965. (See Stipulation, Exhibit 1).

4. No other determinations have been made by the Attorney General of the United States or the Director of the Census under the said provision of the Voting Rights Act of 1965 which would have any application to this litigation.

5. Defendants Clifton Abernathy, Harry Drake, Goldsby Tucker, and John Stokes are members of the Hale County Commission. The term of office of Commissioners Drake and Tucker expire on the first Monday after the second Tuesday in January, 1977; the terms of Commissioners Abernathy and Stokes expire on the first Monday after the second Tuesday in January, 1979.

6. Defendant Richard M. Avery is Probate Judge of Hale County, Alabama. As such, he is an ex-officio member and Chairman of the Hale County Commission.

7. W. H. Knight is Chairman of the Hale County Democratic Executive Committee.

8. Prior to November 1, 1964, the Commissioners of Hale County were elected by district pursuant to Act No. 61 (H. 209), Acts of Alabama 1953, Vol. 1, p. 89 as amended by Act No. 370, Acts of Alabama 1959, Vol. II, p. 961. Alabama Act No. 370 (1959) provided for a referendum to be held to determine whether Act No. 370 should be adopted.

9. A referendum was held on November 8, 1960, at which time Act No. 370, supra, was adopted. (See Stipulation, Exhibit 2).

10. Act No. 320 (H. 764) of the 1965 session of the Alabama Legislature, Acts of Alabama, 1965, Vol. 1, p. 439, provided for a referendum to be held to determine whether to change the method of electing County Commissioners from a district to an at-large basis.

11. A referendum was held on November 30, 1965, at which time Act No. 320, supra, was adopted. (See Stipulation, Exhibit 3).

12. Subsequent to the enactment of Act No. 320 in the Regular Session of the Legislature of Alabama in 1965, the Alabama Legislature enacted the following two enactments:

Act No. 2022, Regular Session, 1971 (providing for at-large election with no requirement of residency other than that the candidate be a resident of Hale County, Alabama.)

Act No. 620, Regular Session, 1973 (providing for at-large election—district residence; residency districts different from those provided for in the above referenced 1965 enactment.) (See Stipulation, Exhibits 4 and 5).

13. Neither the 1965, 1971, nor 1973 acts referred to above, nor the procedure of electing County Commissioners at-large referred to in each of these three acts has met the preclearance requirements of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973d. (See Stipulation, Exhibit 6).

14. In May and November, respectively, 1966, and every two years thereafter, primary and general elections for County Commissioner have been held on an at-large basis.

15. The changes referred to in Paragraphs 10 and 11 above, and the manner of electing County Commissioners from a district to an at-large basis constitutes a change affecting voting within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973d.

16. No action has been instituted in the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act of 1965, as amended, for a declaratory judgment that the post-1964 change from electing Commissioners by district to at-large neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

17. In November, 1974, a general election was conducted at which Commissioners for places 1 and 4 were elected. In May, 1976, a primary election was conducted in Hale County to elect candidates to run for Commissioner Places 2 and 3. The 1974 general and the 1976 primary elections were conducted pursuant to the at-large system of election. Another general election is scheduled to be held on November 2, 1976. The persons elected, including two members of the County Commission, in the general election are scheduled to hold office through the first Monday after the second Tuesday in January, 1981.

18. On April 23, 1976, the Assistant Attorney General for the Civil Rights Division, on behalf of the Attorney General of the United States, interposed an objection to Hale County's change from the method of electing County Commissioners by district prior to November 1, 1964, to a method of electing County Commissioners at-large in 1966, and, in said letter the Assistant Attorney General requested the Defendant, Hale County, to provide more information to evaluate the residency districts, as provided for in the 1973 enactment. (See Stipulation, Exhibit 7).

19. The provisions of 42 U.S.C. 1973 are applicable to Hale County, Alabama, and the failure to comply with Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973(d)), as amended, and as described in the preceding paragraph, renders the post-1964 change of electing County Commissioners to an at-large basis legally unenforceable.[1]

Now, therefore, it is hereby ORDERED, ADJUDGED and DECREED:

That this court concludes that the provisions of 42 U.S.C. 1973 are applicable to Hale County, Alabama, and the election procedures for County Commissioners in that county effected by legislative enactments as hereinafter set out since the passage of the 1965 Voting Rights Act are covered by Section 1973d (Section 5 of the Voting Rights Act of 1965)[2] and that the following conclusions of law result therefrom:

a. That defendants failed to meet the preclearance requirements of Section 5 of the Voting Rights Act of 1965 with respect to the 1965, 1971, and 1973 enactments, and thus said acts are of no force or effect and that

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1. See Footnote 2, *infra*.

2. An opinion on this conclusion will follow in the near future.

any elections conducted pursuant to the provisions of said act are and were unlawful.

b. That the invalidity of all past general elections held for county commissioner pursuant to the 1965, 1971, and 1973 enactments shall not affect the validity of action already taken or to be taken by the officials so elected until their successors have been lawfully elected.

c. That the effect of declaring the method of electing county commissioners on at-large basis as set out in the 1965, 1971, and 1973 enactments to be unlawful, requires the defendants to utilize the method of electing county commissioners by district as set forth in Act No. 370, Acts of Alabama 1959, Vol. II, p. 961, unless and until such time as the Attorney General or the District Court of the District of Columbia determines otherwise.

This court further ORDERS, ADJUDGES and DECREES that the following course of action concerning the November 2, 1976 election is to be followed:

(1) That the November 2, 1976 election be held as scheduled; and that the two persons elected as Commissioners in said election and the other two members of the Hale County Commission shall serve provisonally pending the further orders and decrees of this court, and vested with all the power, authority, and duties accorded by law.

(2) That the defendants shall file with the Attorney General of the United States within fifteen days a letter submitting the 1965, 1971, and 1973 enactments, and including all information requested by the Attorney General of the United States in his letter of April 23, 1976. (See Stipulation, Exhibit 7).

(3) That the Attorney General of the United States shall treat the submission of said acts referred to in para-

graph 2, and the response to the request for more information, of April 23, 1976, on an expedited basis and respond as soon as possible to the defendants with copies to this court.

(4) That the defendants, should they receive an answer objecting to the said submission, shall, if they desire, within thirty days of receipt of such answer, file with the United States District Court for the District of Columbia, an action under the provisions of 42 U.S.C. 1973c. The parties are to advise this court within sixty (60) days of any action taken by the Attorney General or by the United States District Court for the District of Columbia.

(5) Upon defendants' failure to file such an action within said time period, or upon a determination of such an action which neither reverses the decision of the Attorney General nor upholds the constitutionality of the 1973 Act, the parties agree that a prompt election shall be held for members of the Hale County Commission by district.

The court retains jurisdiction of this cause for whatever further relief may be necessary.

ORDERED this 18th day of October, 1976.

/s/ John Godbold
United States Circuit Judge

/s/ Virgil Pittman
United States District Judge

/s/ W. B. Hand
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION

No. 76-403-P

UNITED STATES OF AMERICA,
Plaintiff,
v.
COUNTY COMMISSION, HALE COUNTY, ALABAMA, CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, and JOHN STOKES, Commissioners; RICHARD M. AVERY, Probate Judge; and W. H. KNIGHT, Chairman of the Hale County Democratic Executive Committee,
Defendants.

JUDGMENT

(Filed October 18, 1976)

It is hereby ORDERED, ADJUDGED and DECREED:

That this court concludes that the provisions of 42 U.S.C. 1973 are applicable to Hale County, Alabama, and the election procedures for County Commissioners in that county effected by legislative enactments as hereinafter set out since the passage of the 1965 Voting Rights Act are covered by Section 1973d (Section 5 of the Voting Rights Act of 1965) and that the following conclusions of law results therefrom:

a. That defendants failed to meet the preclearance requirements of Section 5 of the Voting Rights Act of 1965 with respect to the 1965, 1971, and 1973 enactments,

and thus said acts are of no force or effect and that any elections conducted pursuant to the provisions of said act are and were unlawful.

b. That the invalidity of all past general elections held for county commissioner pursuant to the 1965, 1971, and 1973 enactments shall not affect the validity of action already taken or to be taken by the officials so elected until their successors have been lawfully elected.

c. That the effect of declaring the method of electing county commissioners on at-large basis as set out in the 1965, 1971, and 1973 enactments to be unlawful requires the defendants to utilize the method of electing county commissioners by district as set forth in Act No. 370, Acts of Alabama 1959, Vol. II, p. 961, unless and until such time as the Attorney General or the District Court of the District of Columbia determines otherwise.

This court further ORDERS, ADJUDGES and DECREES that the following course of action concerning the November 2, 1976 election is to be followed:

(1) That the November 2, 1976 election be held as scheduled; and that the two persons elected as Commissioners in said election and the other two members of the Hale County Commission shall serve provisionally pending the further orders and decrees of this court, and vested with all the power, authority, and duties accorded by law.

(2) That the defendants shall file with the Attorney General of the United States within fifteen days a letter submitting the 1965, 1971, and 1973 enactments, and including all information requested by the Attorney General of the United States in his letter of April 23, 1976. (See Stipulation, Exhibit 7.)

(3) That the Attorney General of the United States shall treat the submission of said acts referred to in Paragraph 2, and the response to the request for more information, of April 23, 1976, on an expedited basis and respond as soon as possible to the defendants, with copies to this court.

(4) That the defendants, should they receive an answer objecting to the said submission, shall if they desire, within thirty days of receipt of such answer, file with the United States District Court for the District of Columbia, an action under the provisions of 42 U.S.C. 1973c. The parties are to advise this court within sixty (60) days of any action taken by the Attorney General or by the United States District Court for the District of Columbia.

(5) Upon defendants' failure to file such an action within said time period, or upon a determination of such an action which neither reverses the decision of the Attorney General nor upholds the constitutionality of the 1973 Act, the parties agree that a prompt election shall be held for members of the Hale County Commission by district.

The court retains jurisdiction of this cause for whatever further relief may be necessary.

ORDERED this 18th day of October, 1976.

/s/ Virgil Pittman
United States District Judge.

APPENDIX II

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA,
NORTHERN DIVISION

CIVIL ACTION

NO. 76-403-P

UNITED STATES OF AMERICA,
Plaintiff,

vs.

COUNTY COMMISSION, HALE COUNTY, ALABAMA, CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, and JOHN STOKES, Commissioners; RICHARD M. AVERY, Probate Judge; and W. H. KNIGHT, Chairman of the Hale County Democratic Executive Committee,
Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that County Commission, Hale County, Alabama, Clifton Abernathy, Harry Drake, Goldsby Tucker, and John Stokes, Commissioners; Richard M. Avery, Probate Judge; and W. H. Knight, Chairman of the Hale County Democratic Executive Committee, Defendants in the above-styled cause, hereby appeal to the Supreme Court of the United States from the Judgment of the Three-Judge District Court for the Southern District of Alabama, Northern Division, dated, to-wit: October 18, 1976, adjudging and decreeing that the provisions of

43 U.S.C. 1973 are applicable to Hale County, Alabama, and that the election procedures for County Commissioners in Hale County, Alabama, effected by certain Legislative Enactments referred to in said Opinion since the passage of the Voting Rights Act of 1965 are covered by 42 U.S.C. 1973b, 1973c, and 1973d (including Section 5 of the Voting Rights Act of 1965).

This appeal is taken pursuant to 28 U.S.C., Section 1253.

The Defendants hereby request the Clerk of the Court to please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record and to certify the same.

/s/ W. McLean Pitts
Of Counsel for Defendants-Appellants

Pitts and Pitts
Attorneys at Law
Post Office Drawer 537
Selma, Alabama 36701

Gayle and Blackwell
Attorneys at Law
Post Office Box 592
Selma, Alabama 36701

Attorneys for Defendants
and Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon the following:

(1) Mr. Edward H. Levi
Attorney General of the United States
United States Department of Justice
Washington, D. C. 20530

(2) Mr. J. Stanley Pottinger
Assistant Attorney General
United States Department of Justice
Washington, D. C. 20530

(3) Mr. Charles S. White-Spunner, Jr.
United States Attorney
Post Office Drawer "E"
Mobile, Alabama 36601

(4) Mr. Gerald W. Jones, Attorney
United States Department of Justice
Washington, D. C. 20530

(5) Mr. James M. Fallon, Attorney
United States Department of Justice
Washington, D. C. 20530

by mailing a copy thereof to each of them at the above street and/or post office address by United States mail, postage prepaid, on this, the 12th day of November A.D., 1976.

/s/ W. McLean Pitts
Of Counsel for Defendants
and Appellants

Supreme Court, U. S.
FILED
FEB 25 1977
MICHAEL RODAK, JR., CLERK

No. 76-772

In the Supreme Court of the United States

OCTOBER TERM, 1976

COUNTY COMMISSION, HALE COUNTY, ALABAMA, ET AL.,
APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

DANIEL M. FRIEDMAN,
Acting Solicitor General,

DREW S. DAYS, III,
Acting Assistant Attorney General,

WALTER W. BARNETT,
JOHN C. HAMMOCK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-772

COUNTY COMMISSION, HALE COUNTY, ALABAMA, ET AL.,
APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court be affirmed.

OPINIONS BELOW

The district court's opinion and order of October 18, 1976 (J.S. App. A1-A8), and a supplement to its opinion and order filed on January 24, 1977 (App., *infra*, pp. 1a-8a), are not yet reported.

JURISDICTION

The judgment of the three-judge district court was entered on October 18, 1976 (J.S. App. A9-A11). Notice of appeal was filed on November 15, 1976 (J.S. App. A12-A13), and the jurisdictional statement was filed on December 7, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the designation by appropriate federal officials of the State of Alabama as a state subject to the Voting Rights Act of 1965, 42 U.S.C. 1973b, *et seq.*, operates to subject all subdivisions of that state to the Act.

STATEMENT

Pursuant to Section 4(b) of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U.S.C. (Supp. V) 1973b(b), the State of Alabama was designated by the Attorney General and the Director of the Census on August 6, 1965, 30 Fed. Reg. 9897, as one of several States covered by the preclearance provisions[1] of Section 5 of the Act, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c. See J.S. App. A3.

Prior to November 1, 1964, the critical date for Section 5 purposes,[2] the commissioners of Hale County, Alabama, were elected by single-member districts.[3] Since passage of

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[1]Section 4(b) of the Act, as amended, 42 U.S.C. (Supp. V) 1973b(b), makes the Act applicable "in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein" were registered or voted in November, 1964. Section 5 of the Act, as amended, 42 U.S.C. (Supp. V) 1973c, requires that "[w]henever a State or political subdivision with respect to which" such determinations have been made enacts or seeks to administer any "standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" such state or subdivision must first obtain either a declaratory judgment from a three-judge District Court for the District of Columbia that such change does not have a discriminatory purpose or effect, or must submit such change to the Attorney General for preclearance.

[2]See note 1, *supra*.

[3]Act No. 360 (H. 838), Acts of Alabama 1959, Vol. II, pp. 961-962; see also J.S. 7 and J.S. App. A4.

the Voting Rights Act, the Alabama legislature has enacted three laws effecting voting changes within Hale County. On August 10, 1965, the legislature provided that county commissioners would be elected at large from residency districts.[4] On September 20, 1971, the legislature provided that county commissioners of Hale County would be elected at large, but with no residency requirement other than that a candidate be a resident of Hale County.[5] Finally, on August 27, 1973, the legislature reverted to at-large elections from residency districts, but the districts were different from those that had been in effect from 1965 to 1971.

None of these enactments nor any of the election procedures referred to therein was submitted to the Attorney General for clearance under Section 5 of the Voting Rights Act, and no action was instituted in the United States District Court for the District of Columbia, pursuant to Section 5,[6] for a declaratory judgment (J.S. App. A5).

On July 31, 1976, the Attorney General, acting pursuant to Section 12(d), 79 Stat. 444, 42 U.S.C. 1973j(d), instituted this action in the district court to enjoin the election of county commissioners in Hale County scheduled for November 2, 1976, for failure to comply with Section 5.

The three-judge district court held, *inter alia*, that:

(1) Hale County "is a political and geographical subdivision of the State of Alabama" (J.S. App. A3);

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[4]Act No. 320 (H. 764), Acts of Alabama 1965, Vol. I, pp. 439-440. See also J.S. 7. The change was made subject to approval by referendum, and was so approved on November 30, 1965. J.S. App. A4.

[5]Act No. 2022 (H. 2507), Acts of Alabama 1971, Vol. IV, pp. 3261-3262; see J.S. 7; J.S. App. A4.

[6]See note 1, *supra*.

(2) The Voting Rights Act of 1965 applies to Hale County and, therefore, the election procedures for county commissioners changed by the 1965, 1971 and 1973 legislative enactments referred to above are subject to the preclearance requirements of Section 5 (J.S. App. A6); and

(3) Appellants had failed to meet Section 5's preclearance requirements with respect to those three enactments and, therefore, those acts "are of no force or effect" and any elections conducted pursuant to them "are and were unlawful" (J.S. App. A6-A7).

The district court declined to enjoin the 1976 general election but ordered that the two commissioners to be elected (and the two commissioners whose terms extended beyond the November 1976 elections) "shall serve provisionally pending the further orders and decrees of this court" (J.S. App. A7). The court also ordered appellants to submit to the Attorney General the 1965, 1971 and 1973 laws which had not been precleared (J.S. App. A7). The court ordered that if the Attorney General objected to the enactments, the appellants would have 30 days to file suit under Section 5 in the District Court for the District of Columbia.[7] If they chose not to file suit, or if the District Court for the District of Columbia neither reversed the Attorney General's decision nor upheld the constitutionality of the 1973 enactment, then elections, by district, were to be held promptly (J.S. App. A8). Appellants' submission was received on November 4, 1976, by the Attorney General, who interposed an objection on December 29, 1976.[8]

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[7] On motion of appellants, the district court later extended this date through February 15, 1977. Appellants have so filed.

[8] A copy of the Attorney General's letter of objection is attached as an Appendix to this Motion. App., *infra*, pp. 9a-11a.

ARGUMENT

Appellants' only contention on this appeal is that Hale County, Alabama, is not covered by Section 5 of the 1965 Voting Rights Act because the Attorney General and the Director of the Census did not specifically designate Hale County in the published notice of coverage, 30 Fed. Reg. 9897 (August 7, 1965) (J.S. 9). This argument is without substance.

In the first place, the voting changes involved were enacted by the state legislature and are therefore subject to Section 5 even if special designation of Hale and other Alabama counties was required with respect to legislation enacted by county commissioners. The Jurisdictional Statement does not address this fundamental point which, in our view, is dispositive of this appeal.

Second, appellants' contention that the Attorney General and Director of the Census must specifically designate political subdivisions within a designated state is contrary to the language of the Act, its legislative history, and eleven years of uniform practice under it. Section 4(b) provides (emphasis added) that "[t]he provisions of subsection (a) of this section shall apply *in any State* or in any political subdivision of a State" for which the requisite determinations have been made by the Attorney General and the Director of the Census. Section 5 then applies "[w]henever a State or political subdivision with respect to which" Section 4(a) applies seeks to enact a voting change. The Attorney General and the Director of the Census, in an action not challenged here,[9] designated Alabama as one of several States to which Section 5's preclearance requirements applied, and the political subdivisions within Alabama are

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[9] *South Carolina* v. *Katzenbach*, 383 U.S. 301, upheld the constitutionality of Section 4 of the Act.

thereby included in that designation. Furthermore, since the Act (Section 14(c)(2), 79 Stat. 445, 42 U.S.C. 1973 *l*(c)(2)) defines "political subdivision" to mean "any county," the coverage of counties by the designation of an entire state was obviously contemplated by the Act.

In addition, as the district court properly concluded (App., *infra*, pp. 4a-6a) the legislative history of the Voting Rights Act unequivocally contradicts appellants' position. Both the House and Senate Committee Reports specifically stated: "Where an entire State falls within this subsection [i.e., Section 4(b)], so does each and every political subdivision within that State." H.R. Rep. No. 439, 89th Cong., 1st Sess. 25 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., Part 3, 23 (1965).

Finally, as the district court noted (App., *infra*, pp. 6a-7a), its conclusion that the designation of Alabama brought Hale County within the Act is supported by the construction given to Section 5 by this Court in several cases. For example, in *Perkins* v. *Mathews*, 400 U.S. 379, 381 n. 2, this Court stated, "Mississippi and its subdivisions have been determined to be covered by the Act," citing the designation of Mississippi in the same Federal Register notice that also named Alabama and which appellants now argue did not operate to include Alabama's subdivisions. The coverage of Louisiana "and its political subdivisions" by the same notice was routinely noted in *Beer* v. *United States*, 425 U.S. 130, 133, n. 2.

In short, appellants' reading of the statute (for which they cite no authority) is manifestly incorrect and the district court properly rejected it.

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

DREW S. DAYS, III,
Acting Assistant Attorney General.

WALTER W. BARNETT,
JOHN C. HAMMOCK,
Attorneys.

FEBRUARY 1977.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA NORTHERN DIVISION

CIVIL ACTION

No. 76-403-P

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

COUNTY COMMISSION, HALE COUNTY, ALABAMA, CLIFTON ABERNATHY, HARRY DRAKE, GOLDSBY TUCKER, AND JOHN STOKES, COMMISSIONERS; RICHARD M. AVERY, PROBATE JUDGE; AND W. H. KNIGHT, CHAIRMAN OF THE HALE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE,
DEFENDANTS.

SUPPLEMENT TO OPINION AND ORDER DATED OCTOBER 18, 1976

On the 18th day of October, 1976, this court rendered an opinion and order in this cause. The court stated:

> That this court concludes that the provisions of 42 U.S.C. 1973 are applicable to Hale County, Alabama, and the election procedures for County Commissioners in that county effected by legislative enactments as hereinafter set out since the passage of the 1965 Voting Rights Act are covered by Section 1973d (Section 5 of the Voting Rights Act of 1965[2] . . . .

---

[2]An opinion on this conclusion will follow in the near future.

The following is the opinion indicated in the footnote.

The defendants, County Commission, Hale County, Alabama, et al., contend that the Voting Rights Act of 1965 has no application to the Hale County Commission. They submit "that the failure of the Attorney General of the United States and the Director of the Census to designate by publication in the Federal Register Hale County, Alabama, as a political subdivision under Section 1973b(b)" precludes applying Section 5 and other provisions of the Voting Rights Act of 1965 to Hale County.[1]

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[1]Section 1973b(b) of 42 U.S.C. states:

"Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register
(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972; or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under Section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register."

See also §1973c:

"§1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973 b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceedings if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission,

Plaintiffs counter that the designation of a state automatically subjects all political subdivisions in that state to the preclearance requirements of Section 5 of the Act.

The parties do not dispute that Alabama is a political subdivision as defined in Section 1973e [*sic*] (c)(2):

> (2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

Alabama was designated as one of the seven states which came within the above statutory formula concerning Section 5 coverage. 30 Fed. Reg. 1897 [*sic*] (1965).

The legislative history of the Voting Rights Act, as well as subsequent cases dealing with its interpretation and enforcement makes it clear that the August 7, 1965, designation applied to those states so designated including all of its political subdivisions. The House Majority

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or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

As amended Pub. L. 94-73, Title II, §§204, 206, Title IV, §405, Aug. 6, 1975, 89 Stat. 402, 404."

Report (Judiciary Committee) No. 439, June 1, 1965, in discussing subsection 4(b)(1) and 4(b)(2), stated:

> 4(b)(1) - This is the first of the determinations which must be made before the provisions of subsection 4(a) become operative. The Attorney General must determine that a State or any political subdivision of a State maintained any test or device on November 1, 1964, as a qualification for voting.
>
> 4(b)(2) - This subsection sets forth the determinations which the Director of the Census must make before the provisions of subsection 4(a) become operative. The Director of the Census must determine that less than 50 per centum of the persons of voting age residing in any State or any political subdivision of a State were registered to vote on November 1, 1964, or voted in the presidential election of 1964. The vote in the presidential election of 1964 is the vote cast for the presidential candidates. *Where an entire State falls within this subsection, so does each and every political subdivision within that State.* (Emphasis added.) U.S. Code Cong. Adm. News 89th Cong., 1965, Vol. II, page 2456.

Twelve members of the Senate Judiciary Committee made substantially the same point in referring to Subsection 4(b)(2):

> This subsection [4(b)(2)] sets forth the two determinations which the Director of the Census must make under the first formula before the provisions of subsection 4(a) become operative:
>
> (a) First, the Director of the Census must determine that less than 50 percent of the persons of voting age, other than aliens and persons in active military service and their dependents, residing in any State or any political subdivision of a State were registered to vote on November 1, 1964, or

voted in the presidential election of 1964. The exclusion from voting age population of aliens and military persons was added by the committee. The vote in the presidential election of 1964 is the vote cast for the presidential candidates. *Where an entire State falls within this subsection, so does each and every political subdivision within that State.* (Emphasis added.)

(b) Second, the Director of the Census must determine that, according to the 1960 Census, more than 20 percent of the persons of voting age were nonwhite in any State or political subdivision of a State. *Where an entire State falls within this subsection, so does each political subdivision within that State.* (Emphasis added.) This determination was not required in the bill as introduced. U.S. Code Cong. Adm. News 89th Cong. 1965, Vol. II, pages 2560, 2561.

The treatment of cases arising under the Voting Rights Act by both the Supreme Court and the lower federal courts strongly suggests that defendants' interpretation cannot be sustained. The Supreme Court has found that Congress intended that Section 5 have the "broadest possible scope" and that it "reach any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Board of Elections,* 393 U.S. 544, at 566-567, 89 S. Ct: 817, 22 L.Ed.2d 1 (1969). The central issue in *Allen* was the coverage by Section 5, including coverage of two counties in the State of Mississippi. The Supreme Court stated that ". . . the balance of legislative history . . . indicates that Sec. 5 applies to these cases." 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d at 20.

In *Perkins v. Mathews,* 400 U.S. 397, 27 L.Ed.2d 476 (1971), a suit involving changes by the City of Canton, Mississippi, in boundary lines, polling places, and electoral methods, the Supreme Court declared that, "Mississippi

and its subdivisions have been determined to be covered by the [Voting Rights] Act. 30 Fed. Reg. 9897 (August 6, 1965)," 400 U.S. at 382, 27 L. Ed. 2d at 481, n. 2, even though only the State of Mississippi was designated by the Attorney General and the Director of the Census. More recently, in *Beer v. United States,* U.S. , 47 L.Ed.2d 629 (1976), a case involving a reapportionment plan for the City of New Orleans, the Supreme Court reiterated that the coverage of the preclearance requirements of the Act applies to all political subdivisions of a designated state when it said, "Louisiana and its political subdivisions are subject to the provisions of §4 [of the Act]." (cite omitted) U.S. at , 47 L.Ed.2d at 635, n. 2.

Indeed, the affected jurisdictions themselves have often at least impliedly conceded that designation of a state is tantamount to designation of all political subdivisions within that state.

In *U.S. v. Garner,* 349 F. Supp. 1054 (N.D. Ga. 1972), a three-judge district court held that where the City of Jonesboro had failed to timely secure favorable determination of a proposal to change an election standard, the municipal election in which the changes were implemented was unlawful and a new election was required. The parties stipulated that the "provisions of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. Sec. 1973c, apply to the City of Jonesboro, Georgia." 349 F. Supp. at 1055. In *City of Petersburg, Virginia v. United States,* 354 F. Supp. 1021 (D.C. D.C. 1972), judgment aff'd, see 93 S. Ct. 1441 (1973), (a declaratory judgment action by the City seeking preclearance of a proposed annexation) it was acknowledged that the "City of Petersburg, like all political subdivisions of the Commonwealth of Virginia, is required to clear changes in its voting procedures in accordance with Section 5 of the Voting Rights Act of 1965 as amended, 79 Stat. 439; 42 U.S.C. Sec. 1973c." 354 F. Supp. at 1022.

The above cases are not binding precedent in its strictest sense since the issue here posed was not clearly joined. They do, however, indicate a reasoned judgment by these parties and the courts that the coverage of the Act was to include all the political subdivisions of any designated state.

It is therefore ORDERED, ADJUDGED, and DECREED that the provisions of 42 U.S.C. Sec. 1973 are applicable to Hale County, Alabama, by reason of Alabama having been designated as set out in "Appendix A" to the October 18, 1976, Opinion and Order, and the election procedures for County Commissioners in that county were affected by legislative enactments as set out in that Opinion and Order and referred to in the Judgment entered.

Done, this the 24th day of January, 1977.

/s/ John Godbold
United States Circuit Judge

/s/ Virgil Heiman
United States District Judge

/s/ W. B. Hand
United States District Judge

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
24TH DAY OF JANUARY, 1977,
MINUTE ENTRY
NO. 42756
WILLIAM J. O'CONNOR, CLERK
BY /s/ L. Betancour
Deputy Clerk

December 29, 1976

T. 12/10/76

JSP:AJK:mrk
DJ 166-012-3
V7804; X8956-58

Mr. W. McLean Pitts
Pitts, Pitts & Thompson
Attorneys at Law
P. O. Drawer 537
Selma, Alabama 36701

Dear Mr. Pitts:

This is in reference to Act 320 (1965), Act 2022 (1971), and Act 620 (1973) which provide for the method of electing the governing body of Hale County, Alabama. These acts were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on November 4, 1976.

In making a determination under the Voting Rights Act, we apply the legal principles developed by the courts in the same or analogous situations. We are aware that 66% of the population in Hale County is black and that the black population therefore constitutes a numerical majority. As the court stated in *Graves* v. *Barnes*, 343 F. Supp. 704, 730 (1972):

> In the context of the Constitution's guarantee of equal protection "minority" does not have a merely numerical denotation; rather it refers to an identifiable and specially disadvantaged group.

In affirming the District Court's decision the Supreme Court stated in *White* v. *Regester*, 412 U.S. 755 (1973) that the test to be applied was whether such a minority had been excluded from effective participation in political

life. The Court held that such a finding was sufficient to sustain the District Court's decision that single-member districts were required.

Each of the submitted Acts provides for the governing body to be elected on an at-large basis as opposed to the previous method of electing by single-member districts. Our investigation has resulted in the conclusion that the black population of Hale County has been prevented from entering the political process in a reliable and meaningful manner. This is evidenced by the fact that in Hale County no black has ever been elected to county-wide office.

Under these circumstances, I am unable to conclude, as I must under the Voting Rights Act, that the use of an at-large election system in Hale County will not have the effect of discriminating on account of race. I must, therefore, on behalf of the Attorney General, interpose an objection to the implementation of Act 320 (1965), Act 2022 (1971), and Act 620 (1973). Of course, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these Acts have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.

Finally, in our April 23, 1976, letter of objection we suggested that should the county decide to use the present residency districts as single-member districts from which to elect its commissioners in the future we would evaluate them as such upon being furnished the additional information requested therein. While we note that you have responded to the request for additional information, there is no indication that the county has decided to use these districts as single-member districts. Consequently we have made no determination in that regard.

Pursuant to the court order in *United States* v. *County Commission, Hale County, Alabama, et al.* (Civ. Action No. 76-403-P), I am sending a copy of this letter to that court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division